

INFORMATION ON ABANDONED CONSTRUCTION SITES

The recent economic downturn leaves many unfinished/inactive construction sites without adequate storm water protection. This turn of events leaves many sites going into the rainy season with little or no erosion and sediment control BMPs. Many of the enrollees under the construction permit have not had their Notice of Termination approved by the Regional Board since the site has not been stabilized, while other enrollees have abandoned the site and no NOT has been submitted. In some cases the owners/builders intend to continue the project at a future date so the stabilization methods are not for long term but temporary purposes.

Here are some options for inactive projects:

No Responsible Party

- Properties have been found abandoned without any agency notification or viable contact. In such a case the land is most likely still owned by investor(s), investment firm(s), banks, or by the counties (tax collection). If the land is wanted by the city or county, they can take possession (through eminent domain) of the land with the option of a possible resale.
 - The city could resell the land and require the new owner to install stabilization BMPs.

Large Developers Options

- If a Developer of a large project transfers the project to the city, the city is now liable for the projects compliance
- Sell the land back to counties/cities other interested developers, or banks
- If there are no interested buyers, they have to forfeit the land back to the Cities/Counties to avoid the costly property taxes/liens by the tax assessors

If the owner is out of money and is denied further funds from the bank, but the bank is not the owner:

- The owner could declare bankruptcy and liquidate assets where new property owner would stabilize the site.
- The owner could try to get the bank to transfer the title to their institution and receive stabilization money that way
- The City can put a tax lien¹ on the property to pay for stabilization or cloud the title²
- Counties in your regions may have a fund where they pay for site clean up and then bill the site owner/responsible party. If a site is being problematic, the county could be contacted for further assistance. They have no mechanism for paying for the cleanup without reimbursement from the site owner/responsible party. The benefit to having the local municipality address these sites is that they already have vendors (contractors) set up to do the work (liability, terms of service, price negotiation, etc), so they can get the process started quickly. This resource cannot be depended on from all counties due to funding and staff availability.

Bankrupt owner/In process of bankruptcy/Foreclosure

If the owner of the property is going through bankruptcy:

- City can put a tax lien¹ on the property to pay for stabilization or cloud the title²

¹ A **tax lien** is a **lien** imposed on property by law to secure payment of taxes. Tax liens may be imposed for delinquent taxes owed on real property or personal property, or as a result of failure to pay income taxes or other taxes.

² Any document, claim, unreleased lien, or encumbrance that may superficially impair or injure the title to a property or make the title doubtful because of its apparent or possible validity.

- (A tax lien is a lien imposed on property by law to secure payment of taxes. Tax liens may be imposed for delinquent taxes owed on real property or personal property, or as a result of failure to pay income taxes or other taxes.)
- Voluntary Abatement/General Abatement through the local municipality (Any document, claim, unreleased lien, or encumbrance that may superficially impair or injure the title to a property or make the title doubtful because of its apparent or possible validity.)

If the bank takes over a property during the occurrence of a foreclosure, the bank is responsible for the stabilization of the property

NOT under General Construction Permit 99-08-DWQ

Termination criteria under the 99-08 (current CGP) are as follows:

A construction project is considered complete only when all portions of the site have been transferred to a new owner; or the following conditions have been met:

- a. There is no potential for construction related storm water pollution;
- b. All elements of the SWPPP have been completed;
- c. Construction materials and waste have been disposed of properly,
- d. The site is in compliance with all local storm water management requirements, and
- e. A post-construction storm water management plan is in place as described in the site's SWPPP.

There is further USEPA "guidance" stating that our permit must require "stabilization of soils after construction."

And the permit defines "final stabilization" as:

"Final stabilization for the purposes of submitting a NOT is satisfied when:

(1) ...All soil disturbing activities are completed AND EITHER OF THE TWO FOLLOWING CRITERIA ARE MET:

- A uniform vegetative cover with 70 percent coverage has been established OR:
- equivalent stabilization measures have been employed. These measures include the use of such BMPs as blankets, reinforced channel liners, soil cement, fiber matrices, geotextiles, or other erosion resistant soil coverings or treatments.

(2) Where background native vegetation covers less than 100 percent of the surface, such as in arid areas, the 70 percent coverage criteria is adjusted as follows: If the native vegetation covers 50 percent of the ground surface, 70 percent of 50 percent (.70 X .50=.35) would require 35 percent total uniform surface coverage."

NOT under General Construction Permit 2009-0009-DWQ

A NOT must be filed with the Regional Water Board when construction is complete and final stabilization has been reached or ownership has been transferred. The discharger must certify that all State and local requirements have been met in accordance with this General Permit. In order for construction to be found complete, the discharger must install post-construction storm water management measures and establish a long-term maintenance plan. This requirement is intended to ensure that the post-construction conditions at the project site do not cause or contribute to direct or indirect water quality impacts (i.e., pollution and/or hydromodification) upstream and downstream. Specifically, the discharger must demonstrate compliance with the

post-construction standards set forth in this General Permit (Section XIII). The discharger is responsible for all compliance issues including all annual fees until the NOT has been filed and approved by the local Regional Water Board.

D. Conditions for Termination of Coverage

1. Within 90 days of when construction is complete or ownership has been transferred, the discharger shall electronically file a Notice of Termination (NOT), a final site map, and photos through the State Water Boards SMARTS system. Filing a NOT certifies that all General Permit requirements have been met. The Regional Water Board will consider a construction site complete only when all portions of the site have been transferred to a new owner, or all of the following conditions have been met:
 - a. For purposes of “final stabilization,” the site will not pose any additional sediment discharge risk than it did prior to the commencement of construction activity;
 - b. There is no potential for construction-related storm water pollutants to be discharged into site runoff;
 - c. Final stabilization has been reached;
 - d. Construction materials and wastes have been disposed of properly;
 - e. Compliance with the Post-Construction Standards in Section XIII of this General Permit has been demonstrated;
 - f. Post-construction storm water management measures have been installed and a long-term maintenance plan³ has been established; and
 - g. All construction-related equipment, materials and any temporary BMPs no longer needed are removed from the site.
2. The discharger shall certify that final stabilization conditions are satisfied in their NOT. Failure to certify shall result in continuation of permit coverage and annual billing.
3. The NOT must demonstrate through photos, RUSLE or RUSLE2, or results of testing and analysis that the site meets all of the conditions above (Section II.D.1) and the final stabilization condition (Section II.D.1.a) is attained by one of the following methods:
 - a. “70% final cover method,” no computational proof required

OR:

 - b. “RUSLE or RUSLE2 method,” computational proof required

OR:

 - c. “Custom method”, the discharger shall demonstrate in some other manner than a or b, above, that the site complies with the “final stabilization” requirement in Section II.D.1.a.

³ For the purposes of this requirement a long-term maintenance plan will be designed for a minimum of five years, and will describe the procedures to ensure that the post-construction storm water management measures are adequately maintained.